

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

504835-041125

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on _____

Signature _____

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name _____

Application Number

10/760130

Filed

01/16/2004

First Named Inventor

Morris

Art Unit

3749

Examiner

Alfred Basichas

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record. 32,755

Registration number _____

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Stephen D. Scanlon, Esq.

Typed or printed name

216/586-7023

Telephone number

June 29, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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I. Non-Analogous Prior Art

All rejections set forth in the final Office Action are clearly erroneous because they rely on non-analogous prior art in a combination of references under 35 U.S.C. § 103.

The Amendment filed 01/11/2007 explains, at page 4, why the patent to Hagino, et al. is non-analogous prior art.

Regarding the Examiner's Response to Arguments at page 5 of the final Office Action, it is clear error to assert that the particular problem at hand is the use of screen mesh. The problem is not screen mesh. The problem is flame stability at a burner head. Despite the Examiner's citation to *In re Oetiker*, problems involved in filtering sludge are not reasonably pertinent to the problem of stabilizing a flame at a burner head.

Further regarding the Examiner's Response to Arguments, claim 1 does not recite a new use for a sludge filter. Instead, claim 1 recites a new structure for a firing portion of a burner head.

II. Irrelevant Case Law

The final Office Action fails to make a *prima facie* case because it cites case law that provides no support for the rejections.

Claim 1 recites structural limitations of a firing portion of a burner head. The Examiner's reference to *In re Aller* regarding "optimum or workable ranges" does not apply to claim 1 because claim 1 does not recite ranges. The Examiner's reference to Peterson regarding "a disclosed set of percentage ranges" is equally irrelevant because claim 1 does not recite ranges. Those cases provide no logical basis for the Examiner's conclusion of obviousness.

III. Teaching Away

The Examiner asserts, at the end of paragraph 3 of the final Office Action, that "it is within the general skill of one of ordinary skill in the art to select a known structure on the basis of its suitability for the intended use." That observation only applies to the *known* suitability of the prior art for an intended use. The wedge wire of Hagino, et al. is a known structure, but it is not known to be suitable for stabilizing a flame. That discovery by the Applicant led to the claimed invention. It was not disclosed, known, suggested, or predicted in the prior art. Instead, the prior art actually *teaches away* from the use of wedge wire as recited in claim 1. The reasons for this are fully set forth at page 5 of the Amendment filed 01/11/2007.

IV. Conclusion

The final Office Action has clear errors that preclude a *prima facie* case of obviousness for any of the pending claims. Applicant respectfully requests reversal of the rejections and allowance of claims 1 and 3-16.